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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 479

GRAND TRUNK WESTERN RAILROAD COMPANY,
Petitioner,

vs.

LEWIS W. JAMES, ADMINISTRATOR OF THE ESTATE OF COLIN KAHL, DECEASED,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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THE LAWYERS PRINTING COMPANY, CHICAGO

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MAY IT PLEASE THE COURT:

The brief in opposition is riddled with misstatements of fact (without record references) having nothing to do with the fundamental constitutional questions confronting the Court. They are made for the sole purpose of prejudicing petitioner in the eyes of the Court in its consideration of these questions. We refuse to get into an extended discussion of fact details that will serve merely to obscure the basic questions but fairness to our client precludes us from permitting a few of the most egregious ones going unanswered.

Page 5 of the brief states that notwithstanding an Injunction order by the Illinois court a Mr. O'Connor "had Mrs. Kahl removed as Administratrix, had Greenawalt,

an eighty-three-year-old Court Bailiff, appointed in her stead and he, although representing the railroad, arranged for a lawyer to represent the estate in the suit against the railroad filed in Michigan, wherein O'Connor promptly entered his appearance as Petitioner's attorney."

The certiorari record will show that Mrs. Kahl was not removed by Mr. O'Connor or by petitioner, but by the Probate Court of Cass County because she had failed to account as required by law—not because of her defiance of the Michigan injunctions. (R. 169.) It will further show that the Probate Court of Cass County, not Mr. O'Connor or petitioner, appointed Mr. Greenawalt as successor administrator. The Probate Court was undoubtedly aware of Mrs. Kahl's defiance of Circuit Court orders and presumably selected the bailiff of the Circuit Court of Cass County, Michigan, as successor, because he would comply with the orders of Court of which he was an officer. The statement that Mr. O'Connor arranged for the lawyer to represent the estate in the suit against the railroad is false as the record references in the footnote on page 7 of the original petition show. The brief is replete with other misstatements of a similar nature, but, as we have said, we refuse to be sidetracked by them from the main issues.

Whatever may be the subsidiary facts the central one remains, namely, that the Illinois Court has asserted supremacy in the exercise of its injunctive powers over the courts of Michigan. It seeks to deny to the Courts of Michigan the power to control their own citizens in prosecuting oppressive litigation in a foreign jurisdiction. It denies full faith and credit to the Michigan injunctions while at the same time maintaining that any acts done in Michigan in violation of its counterinjunction would give it the right to punish for a violation thereof on the theory that its counterinjunction is valid and binding in

Michigan. In short, contrary to the full faith and credit clause, it claims the right to nullify decrees of a sister state, valid and binding where entered, on the grounds that such decrees are interfering with its jurisdiction. It pays no heed to the fact that an injunction decree operates *in personam*, and, by ignoring that fact, necessarily claims the right to interfere with the jurisdiction of the Court which entered the injunction.

The brief cites a number of alleged reasons for denying the writ, but they only emphasize the necessity for granting it. Nowhere does it suggest how this judicial impasse between Michigan and Illinois is to be resolved unless this Court intervenes. In effect what counsel claim is that the Michigan Court should bow to the Illinois counterinjunction. But the Illinois court has no power of review over the decrees of courts of sister states and Michigan has as much right to have its court orders enforced as Illinois has. Obedience to court orders means orders of courts of all states, not merely of one particular state.

The brief states that the actual question presented is whether Illinois must "recognize an injunctive order subsequently obtained in another State court so that it will be ousted of jurisdiction of the cause?" (p. 3.) The actual question goes much beyond this. Illinois has not refused to "recognize" the Michigan injunctions—it has "recognized" them as valid and binding in Michigan and holds, therefore, that they should be nullified so that the enjoined Michigan citizen can proceed with impunity in Illinois.

In our original petition we pointed out that this Court has never decided whether a decree enjoining a citizen from maintaining an action in a foreign state is entitled to full faith and credit in the latter state in the sense

that it must abate the action when the injunction had been shown, and, that if the decree had to be so recognized, a counterinjunction was necessarily invalid. (pp. 8, 9.) The brief asserts it has been held by "this court" that a Court of a foreign state need not abate an action once a foreign injunction has been shown. (p. 2.) This is not true. This question remains undetermined by this Court to this day. No effort is made in the petition to show why the Michigan injunctions are not entitled to full faith and credit under the plain words of the Constitution.

It is further said that "This proceeding involves no new issue." (Br. 3.) However, so far as we are advised no court of any state of the United States, prior to the present decision, has ever asserted the right to issue a counterinjunction, enjoining enforcement of an injunction against prosecution of a state created cause of action in another state. If an unprecedented decision on a federal constitutional point involves no new issue then there is no such thing.

Cole v. *Cunningham*, 133 U. S. 107, cited in our original petition (p. 9) and ignored in counsel's brief, in itself conclusively demonstrates that the Illinois decision violates the federal constitution. That case held an injunction against the maintenance of an injunction in another state did not interfere with the courts of a sister state, and did not contravene the full faith and credit and privileges and immunities clause. The entire basis for the claim of right to enter a counterinjunction, namely, "protection of prior jurisdiction" is destroyed by this decision.

Although both the petition and this reply have touched on the merits of the decision of the Illinois Supreme Court we understand that the primary function of a petition is not to show error but to demonstrate that the case presents federal questions worthy of review. It is dif-

ficult to conceive of a case that more aptly meets this test than this one. Involved is the question whether an injunction enjoining an action in a foreign state must be recognized by the latter state. This question has never been decided by this Court. The fundamental question, namely, whether a court of one state may, by counterinjunction, enjoin enforcement of injunctions entered by the court of another state when they are valid and binding upon the parties where entered, likewise has never been determined. This latter question is not a mere abstract point of law under the full faith and credit clause. It involves fundamental claims of power between courts of sister states. It can be resolved in an orderly fashion only by a Court possessing power superior to both state Courts in its interpretations of the Federal Constitution. This Court should grant certiorari in order to resolve these novel constitutional questions and to prevent the multiplicity of contempt actions that have already begun.

Respectfully submitted,

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